

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-381-E - ORDER NO. 97-348
APRIL 28, 1997

IN RE: Application of Carolina Power & Light)	ORDER DENYING
Company for Approval of Accelerated)	PETITION FOR
Amortization of Certain Regulatory)	RECONSIDERATION
Assets.)	

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of a Petition for Reconsideration ("Petition") filed by the Consumer Advocate for the State of South Carolina ("Consumer Advocate"). By his Petition, the Consumer Advocate requests that the Commission reconsider Commission Order No. 97-224 (dated March 20, 1997) in which the Commission approved the accounting treatment of accelerated amortization of certain regulatory assets of Carolina Power & Light Company ("CP&L"). For the reasons set forth below, the Commission denies the Petition for Reconsideration.

By his Petition, the Consumer Advocate asserts that the Commission committed error in approving the accelerated amortization without conducting an evidentiary hearing. The Consumer Advocate asserts that approval of the accelerated amortization without evidentiary hearing constitutes error in the following particulars: (1) that the Commission acted without evidence of record to support its decision in violation of S.C. Code Ann §1-23-380(A)(6)(Supp.1996); (2) that the Commission

violated the due process rights of CP&L's customers because parties must be afforded the right to respond and present evidence in a contested case; (3) that the Commission violated S.C. Code Ann. §1-23-320(a) which provides that all parties must be afforded an opportunity for hearing in a contested case; and (4) that the Commission violated S.C. Code Ann. §1-23-330(3) which provides that any party to a contested case may conduct cross-examination.

By Order No. 97-224 (dated March 20, 1997), the Commission approved the accelerated amortization of certain regulatory assets of CP&L. As acknowledged by the Consumer Advocate in his Petition, the Commission in Order No. 97-224 also specifically held that its decision would not prejudice the right of any party to take issue with the amount or with the accounting treatment of these costs in any future rate or earnings related proceeding and that the amortization periods for any remaining unamortized balances would be subject to review and modification. Therefore, Order No. 97-224 preserves the right of the Consumer Advocate to challenge the amount and/or the accounting treatment associated with the accelerated amortizations approved by Order No. 97-224 in CP&L's next rate or earnings related proceeding.

Under the South Carolina Administrative Procedures Act, a "contested case" is defined in S.C. Code Ann. §1-23-310(2) as "a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." The instant docket does

not involve ratemaking, price fixing, or licensing, but merely the accounting treatment to be afforded for certain assets.

Therefore, the instant proceeding does not meet the definition of a "contested case" as envisioned by the Administrative Procedures Act.

All of the statutes cited and relied upon by the Consumer Advocate in his Petition involve "contested cases" under the Administrative Procedures Act. As the instant proceeding does not meet the definition of "contested case" for purposes of the Administrative Procedures Act, the statutes cited by the Consumer Advocate are inapplicable to this case.

Furthermore, as the Commission has specifically preserved the right of the Consumer Advocate or another party to challenge the amount and/or the accounting treatment associated with the accelerated amortizations approved by Order No. 97-224 in CP&L's next rate or earnings proceedings, the Consumer Advocate has not been denied notice or an opportunity to be heard with regard to the rate impact which the accelerated amortizations may have. Until a rate or earnings proceeding is held, any increased expenses associated with the accelerated amortizations will not be reflected in CP&L's rates. At such a time, the Consumer Advocate will have notice and will be afforded an opportunity to present evidence and conduct cross-examination of witnesses in the context of a contested case. Presently, neither the Consumer Advocate nor the customers of CP&L, have been prejudiced by Order No. 97-224.

The Consumer Advocate asserts that approval of the

accelerated amortizations could prejudice the ratepayers of CP&L if the Company is earning in excess of its authorized rate of return. The Consumer Advocate offers that if CP&L is overearning that the ratepayers will not be able to have rates reduced and will not be able to receive refunds for the period between the institution of the increased expenses and the decision in the next rate proceeding or earnings related proceeding. The Commission acknowledges that it could not require CP&L to refund revenues collected pursuant to an existing approved rate. But the Commission cannot agree that approval of the accelerated amortizations could prejudice CP&L's ratepayers if CP&L is earning in excess of its authorized rate of return. Regardless of whether a hearing were held or not, the Commission's approval of the accelerated amortizations (an accounting treatment) would not affect the rates currently being charged by CP&L or the ability, or inability, of CP&L's customers to obtain refunds.

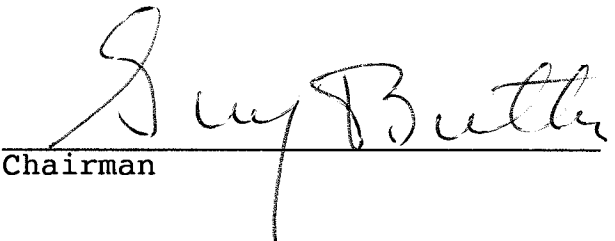
As the instant docket does not involve a contested case as defined in the Administrative Procedures Act, the Commission's decision in Order No. 97-224 is not arbitrary or capricious, does not violate the due process or equal protection clauses of the Constitution of the United States or South Carolina, and does not violate the South Carolina Administrative Procedures Act. Further, the Commission's decision in Order No. 97-224 does not prejudice the Consumer Advocate, any other party, or the ratepayers of CP&L. Therefore, the Commission denies the Consumer Advocate's Petition for Reconsideration.

IT IS THEREFORE ORDERED THAT:

1. The Petition for Reconsideration filed by the Consumer Advocate is denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)